FUNDAMENTAL RIGHTS FOR ANIMALS

BY RAJU Z. MORAY

"DRAGGED FOR AN APPOINTMENT WITH DEATH."
A live bullock being dragged by a tractor at Deonar Abattoir, Bombay.
Courtesy: Mr. Pradeep Chandra

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An idea whose time has come ?

By

RAJU Z. MORAY

Advocate

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FOREWORD

History has been witness to the fact that ideas which are ahead of their times and idealists who propound them are disregarded, criticised, ridiculed and even attacked. Mercifully, the situation is improving gradually and non-traditional remedies for traditional maladies are receiving better acceptance at least in enlightened quarters.

I have had the pleasure of knowing Mr. Raju Moray for almost a decade. I have always admired his legal acumen and academic accomplishments but I am delighted to see how he has put them to use in order to further the cause of animals—a cause to which I too am deeply committed. Dedication to this cause is nothing less than "a reverence for life" as Dr. Albert Schweitzer, the renowned Swiss humanist calls it.

The concept of animal rights is relatively new to this part of the world but the plea of fundamental rights for animals advocated by Mr. Moray is truly pathbreaking. It is a brilliant innovation of what the law can and should provide for and it fits perfectly into the existing environmentally-conscious set up. Our constitution incorporates guarantees in respect of several fundamental rights including the right to life. The laws are expected to cater to the advancement of a peaceful and better social order and to safeguard all aspects of the process of life and living.

If the law can regulate conservation, if it can ensure that soil, water and forests are protected and that air should not be polluted, by the same argument it must necessarily guarantee that animals, birds and all other forms of life, which have as much right as anyone else to live and to be shielded from attack and cruelty, have enforceable rights. It is mistakenly assumed by many that since man has dominated the earth for long, human beings have the absolute freedom to destroy everything around or to conduct themselves in a manner that inflicts horrifying forms of cruelty on other forms of life.

The human species claims to be "civilized" and "cultured", but if these terms are to be applied to the conduct of a large number of them, the definitions of these terms as we know them will have to changed. Since no amount of rational persuasion can bring about any significant improvements in the field of animal

rights, I share Mr. Moray's view that the time has come for laws in respect of all forms of life to be enforced and implemented on the basis of the reasoned position that other beings too have rights which are fundamental for their existence and well-being and which must therefore be recognised, respected and safeguarded by all authorities, especially courts, in accordance with law.

Mr. Raju Moray's essay is novel, it is timely and I am extremely happy that the 'All India Animal Welfare Association' has decide to publish it in the form of a booklet. This essay, and the ideas it conveys, require to be widely circulated in all thinking quarters so that these ideas germinate and are propagated extensively.

- **Justice Michael F. Saldanha**
Judge
Karnataka High Court
Bangalore.

PREFACE

This little booklet is intended to be a blueprint for action.

It is not enough to think about the issues raised. It is vital to do something positive to alleviate the suffering of our fellow living creatures. A single sincere act is any day worth a thousand sincere words. But words are necessary too. To express ideas and points of view and to disseminate them. No edifice was ever erected without a plan, but the contribution of the planner is never greater or lesser than that of the mason who lays the bricks.

We all are fellow travellers and perform our distinct functions. Even those who take a different route should aim for the same goal.

One may differ or compromise on the route to be taken, but one must never waver or compromise on the goal to be achieved. And one must be ready for setbacks too. The judiciary is not a panacea for the ills besetting our society and our political system. The only consolation is that rightly or wrongly the average judge is still perceived by the common man as a more caring and more receptive individual than the average politician or administrator and hence considered more likely to lend a sympathetic ear to ideas such as those I have expressed in the pages that follow.

I cannot conclude without thanking the 'All India Animal Welfare Association' and especially its President Mrs. Sudnya R. Patkar for all that they have done and are doing for the cause of animal welfare. I also wish to record my indebtedness and gratitude to Justice Michael F. Saldanha from whom I learnt as much about love for animals and the environment as I learnt about respect for the law.

- Raju Z. Moray

FUNDAMENTAL RIGHTS FOR ANIMALS

An idea whose time has come ?

1. THE PRESENT PROBLEM :

Animal rights activists are handicapped by the fact that "rights of animals" are at present not enforceable by making use of the quicker and more effective writ jurisdiction of the High Courts across the country and of the Supreme Court of India. The remedies presently available for a redressal of grievances of animals under statutes like 'The Prevention of Cruelty to Animals Act, 1960' are too ineffective and cumbersome and the punishments for violation of animal rights are too lenient to have any deterrent effect on the wrong doers. (See companion article on Page 19 infra). Even 'The Wild Life (Protection) Act, 1972', framed with the avowed object of providing for the protection of wild animals, birds and plants contains provisions for a licence to kill animals in the name of education, scientific research and scientific management. (See Section 12 of the said Act). Our legislations reflect our biases and they will continue to do so as long as human beings take an isolationist approach instead of a holistic one.

2. THE HISTORICAL BACKGROUND :

The history of animal rights is also a history of human wrongs. But it was not so always :

a) A Red Indian Story

According to a Red Indian Story, the ancestors of the Oneida tribe once grew in population so much that some of them had to go and look for a new place to live. After much search, they found an ideal place for habitation but it happened to be the center place for a great community of wolf. Since there was not room enough for the wolves and the Red Indians, a council was held and it was decided to hunt all the wolves. But when the Red Indians thought of what kind of people they would be after killing the wolves, it did not seem to them that they wanted to become such a people. So the Red Indians devised a method of limiting their impact. In all of their decisions, they would ask "Who speaks for Wolf ?" and the interests of the non-human world would be considered. (See Paula Underwood Spencer's "Who Speaks for Wolf" (1983).

b) **Hinduism :**

Closer to home, Hindu mythology offers numerous stories of animals, co-existing as co-equals with humans. In the Ramayana especially, apes like Vali, Sugreev, and Hanuman, the bear Jambuvan and the eagle Jatayu figure very prominently and are treated with love and reverence. Is it not surprising, therefore, that in our country humans (including politicians and judges) bow before an idol of a Monkey-God and an Elephant-God, yet animals (including monkeys and elephants) have no rights ?

c) **Buddhism :**

As a religion, Buddhism is based upon a universal idea of compassion extending to animals as well as humans. There is a beautiful story of the young Siddhartha saving a bird hurt by the arrow of his companion Devdutta who claims a right over his prey. Siddhartha's argument is that the bird belongs to the one who saves its life, not to the one who takes it. The dispute is resolved by asking the bird to decide. It chooses its savior. Siddhartha then nurses it back to normalcy and sets it free.

Another episode from the life of Prince Siddhartha is also very telling:

"To divert his son from his preoccupations the King decided to send him on a visit to a nearby farming village. He hoped that Siddhartha would take an interest in the methods of the farmers. But when he got there, the delicate youth saw the toiling workers, dirty and half-clad, streaming with sweat as they struggled in the heat of the sun. The oxen were laden with heavy yokes that rubbed the hide from their shoulders. The plows they pulled bruised the earth and destroyed worms and insects in their progress. To force the beasts to work, the farmers had to prod them with iron goads that made their straining flanks run with blood. Slaver and foam dripped from their mouths as they were forced to drag the heavy plows over long distances. Thick clouds of gnats and stinging flies never ceased to torment them.

The Prince was overcome with revulsion. When he learned that the labourers were his father's slaves, he freed them on the spot, telling them, "From today, you will no longer be slaves. You are free to go wherever you like and live in happiness." He also released the oxen saying to them, "Go. From now on be free and eat the sweetest grass and drink the purest water and be fanned by cool

breezes from every direction."(See Sherab Chodzin Kohn, 'The Awakened One A Life of the Buddha', Shambhala Publications, 1994)

In the third century B.C., King Ashoka proclaimed by a royal decree that the killing of "parrots, mynas, the aruna, ruddy geese, wild geese, the nandimukha, cranes, bats, queen ants, terrapins, boneless fish, rhinoceroses and all quadrupeds which were useful and not edible" was prohibited in his kingdom. King Ashoka issued this decree twenty six years after his coronation, towards the end of his reign. It is probable therefore that the issuance of such a decree had a lot to do with Ashoka's acceptance of and conversion to Buddhism.

d) The Western Tradition :

The roots of western civilization lie in ancient Greece and in the Judeo-Christian tradition. The philosophy of Aristotle loomed large in Ancient Greece. Aristotle thought that nature is a hierarchy in which those with less reasoning ability exist for the sake of those with more reasoning ability. This "logic" gradually led to the enslavement of other humans ("barbarians") who were considered less rational than the Greeks, but its immediate effect was a perception of animals as a source of food and clothing for man-and nothing else.

The Judeo-Christian tradition is based upon the concept that God created man in his own image and authorised man to subdue the earth and have dominion "over the fish of the sea and over the fowl of the air, and over every living thing that moveth upon the earth" (See "The Holy Bible : Book of Genesis). This "religious" concept led saints like Augustine to interpret the incident of the Gadarene Swine in the New Testament, where Jesus is described as sending devils into a herd of pigs and making them drown themselves in the sea, as God's teaching to us that we have no duties towards animals. Later on, Thomas Aquinas, the patron saint of lawyers, accepted Augustine's interpretation and held that there was nothing wrong per se in making animals suffer, but he feared that since cruelty to animals would ultimately lead to cruelty to humans, "cruelty" as a concept may arguably be objectionable.

The world renowned animal behaviorist Desmond Morris in his book 'The Animal Contract' (1990) has graphically described the connection between Christian religious beliefs and cruelty to non-human living creatures. He says that the early whalers who revelled in towering piles of flesh and gallons of blood were

mostly devout Christian fundamentalists who were taught to look upon the whale as the most hideous incarnation of the forces of evil, by scriptures like 'The Book of Job'. Morris observes that "For the captains of the early whaling ships the Bible was tantamount to a hunting manual, giving helpful hints in addition to moral justification for the carnage".

When one raises objections to contemporary Islamic rites involving animals, one must bear in mind the fact that Islam as a religion is basically a culmination of the Judeo-Christian tradition exemplified by the Old Testament of the Bible. The New Testament, pervaded as it is by the charismatic personality of Jesus Christ; a prophet of love and gentleness, rights the balance to a certain extent. Yet, there are many who believe that when Jesus spoke about the good shepherd caring for and tending his flock he was referring to a spiritual master and his disciples rather than advocating animal welfare.

e) **Islam :**

Yet, a deep and sincere study of the religion of Islam indicates that at its very core it actually propagates kindness to all living creatures. There is a story of how the Holy Prophet told of a prostitute who, on a hot summer day, saw a thirsty dog hovering around a well, lolling its tongue. She lowered her socks down the well and gave water to the dog. Allah forgave all her sins for this one act of kindness (Muslim). The Holy Prophet is also reported to have forbidden the setting up of animals to fight each other (Abu Dawud and Tirmidhi).

The Holy Prophet was once asked by his companions if kindness to animals was rewarded in the life hereafter. He replied, "Yes, there is a meritorious reward for kindness to every living creature" (Bukhari). What really are the instructions of the Holy Quran ? "Kill not a living creature which Allah has made sacrosanct, except for a justifiable reason" (Al Tirmidhi and Al Nasai) (The Quran 6:152 and 17:33).

Maulavi Idris Ahmed has said, "Islam does not attribute any sanctity to the sacrifice of animals - it requires the sacrifice of inner selves". A true 'Mussalman' is not one who merely slaughters an animal and offers it to God, but one who fully surrenders his inner self to the Almighty. "The flesh and blood of the sacrificed animals shall never reach God but your devotion and piety will reach him". (The Quran 22:37).

f) A change in perception :

Over 200 years ago, Jeremy Bentham, the celebrated thinker, wrote in his 'Introduction to the Principles of Morals and Legislation' "The day may come when the rest of animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may one day come to be recognised that the number of the legs, the villosity of the skin, or the termination of the 'os sacrum' are reasons equally insufficient for abandoning a sensitive being to the same fate."

Bentham argued that it was logically fallacious to treat animals differently from humans on the ground that they could not "reason" or "discourse" because "a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day or a week or even a month old". Bentham insisted, very rightly, that the emphasis should never be on whether animals can "reason" or whether they can "talk" but on whether they can "suffer".

g) Setbacks and crawls forward :

Inspite of such thinkers, when Bills to obtain legal protection for animals were proposed in England in 1800 they were defeated. The Bills pertained to a ban on bull-baiting and cock-fighting and for the protection of horses, cattle, sheep and dogs and were introduced by Sir William Pulteney, MP, Lord Erkine of Restormel and Richard Martin (or 'Humanity Dick' as he became known) the Member of Parliament from Galway. The defeat of the Bills was precipitated by opposition from the conservatives. 'The Times' of 25th April 1800, commented that "laws, even good ones, cannot be multiplied with impunity" and "whatever meddles with the private personal disposition of a man's time or property - is tyranny direct". So while Bentham considered deprivation of animal rights as tyrannical, 'The Times' considered empowerment of animals as tyrannical. It was only twenty years later in 1820 that the first anti-cruelty law finally appeared on the statute books in England. In India, the first 'Prevention of Cruelty to Animals Act' came into force in 1890.

In this land of Buddha, the sad reality today is that laws have released bonded humans but not bonded animals. While Siddhartha could not bear the

sight of the suffering oxen and forthwith set them free, the rules framed under the current 'Prevention of Cruelty to Animals Act, 1960 only try to limit the burden on their neck and back in an effort to ease the pain. (See 'The Prevention of Cruelty to Draught and Pack Animals Rules, 1965). Such legal provisions illustrate that a grossly materialistic outlook has led us to make a virtue of selfishness.

3. RECENT DEVELOPMENTS :

It is only recently that scientific data of impending environmental catastrophes has brought some of us to our senses. Peter Singer in his book 'Animal Liberation' (1983 Edn.) has developed the concept of ethics in the treatment of animals. He says that from an ethical point of view we all stand on an equal footing - "Whether we stand on two feet, or four, or none at all". He argues that animals rights activists should essentially ensure that there is no violation of "the principle of equal consideration of interests". This principle is violated when human beings indulge in "speciesism" i.e. giving preference to humans just because they are members of our own species. Singer illustrates his contentions very graphically. For example, he says that there is nothing that can distinguish brain-damaged human orphans from non-human animals. He then poses the question - "Why do we lock up chimpanzees in appalling primate research centers and use them in experiments that range from the uncomfortable to the agonising and lethal, yet would never think of doing the same to a retarded human being at a much lower mental level ?"

Dave Foreman, Co-founder of EARTH FIRST, in his book 'Confessions of an Eco-Warrior' (1991) has suggested that "in all our decisions, both individual and collective, we must not forget the others, who are not represented. We must represent them ourselves. We must constantly extend the Community to include all". Such recent concerns about ecology and environment, prompted by an increasing global awareness in these areas are slowly but surely forcing Indians to empathise with their environment. It is heartening to note that "The Environment (Protection) Act, 1986" defines 'environment' inter alia as the inter-relationship which exists between human beings and other living creatures. This definition is obviously inspired by the fundamental duty of citizens to have compassion for living creatures (Art.51-A(g) of the Constitution of India).

4. TOWARDS EMPOWERMENT :

In my opinion, any long-term and effective struggle for animal rights should commence with the objective of gradual empowerment through law of animals.

Desmond Morris, in his book 'The Animal Contract' (Op.cit.) has mooted a "Bill of Rights" for animals. According to him, this Bill of Rights should contain the following rights:

1 No animal should be endowed with imaginary qualities of good or evil to satisfy our superstitious beliefs or religious prejudices.

2 No animal should be dominated or degraded to entertain us.

3 No animal should be kept in captivity unless it can be provided with an adequate physical and social environment.

4 No animal should be kept as a companion unless it can adapt easily to the lifestyle of its human owner.

5 No animal species should be driven to extinction by direct persecution or by further increases in the human population.

6 No animal should be made to suffer pain or distress to provide us with sport.

7 No animal should be subjected to physical or mental suffering for unnecessary experimental purposes.

8 No farm animal should be kept in a deprived environment to provide us with food or produce.

9 No animal should be exploited for its fur, its skin, its ivory or for any other luxury product.

10 No working animal should be forced to carry out heavy duties that cause it stress or pain."

Morris asserts that "This Bill of Rights does not represent a whimsical ideal. It is practical and feasible. It is, however, very far from being implemented around

the globe today." Tom Regan in his book 'The Case for Animal Rights' (1988) says that animals in general, and certainly, "normal mammalian animals aged one or more" must "never be treated as mere receptacles of intrinsic values (e.g. pleasure or preference-satisfaction) and any harm that is done to them must be consistent with the recognition of their equal inherent value and their equal prima facie right not to be harmed." It is interesting to note that the word 'Animal' has been used in Indian Law as a synonym for all living creatures. 'The Prevention of Cruelty to Animals Act, 1962' defines: "Animal" means any living creature other than a human being (See Section 2 (a) of the Act.).

In a democracy, those who agitate for rights which are natural and justifiable, get them once there is sufficient support for their cause. No one spoke of animals in the Constituent Assembly, so there were no animal rights in the Constitution of India when it was framed and brought into force. Is it not surprising that even in our highly litigious society, the Supreme Court has not had the occasion to consider even a single case under 'The Prevention of Cruelty to Animals Act, 1960' from its inception till date ? Amidst our numerous contentious battles for Human Rights, we have not had the time to pause and reflect upon even the basic rights of the other living creatures who are an integral and invaluable part of our environment. Ideally, it is the Parliament which must rectify this wrong and consider adding an Article 21-A in the Constitution of India by amending it. This proposed Article, at its bare minimum, should stipulate as follows :-

"21-A. Right of living creatures : No living creature shall be deprived of its life or personal liberty except according to procedure established by law."

Animal rights activists should accept the fact that any change in existing legislation is bound to happen very slowly. The law develops at its own pace. As the eminent British Parliamentary Counselor, Godfrey Carter observed in a lecture delivered on 8th October 1980 : "In a society possessed of free institutions and committed to the preservation of liberty and order, law evolves from a rational assessment of the way in which people think and behave, and of their attitude towards each other..... when public attitude changes, the law changes also. But it is unlikely to change immediately because the change of attitude may be long in coming and slow to be noticed; the forces of conservatism are invariably more powerful in the short term than those of reform."

The time may not be ripe to get enough parliamentarians to agree to the amendment proposed above, but animal rights activists should keep this objective

on their agenda for the future because the expression 'procedure established by law' in Article 21 of the Constitution has been judicially construed to mean a procedure which is reasonable, fair and just (See : Maneka Gandhi vs. Union of India, AIR 1978 SC 597). Till the legislature decides to empower animals and other living creatures, the higher judiciary can and should be importuned to adopt an activist approach in this field. It is heartening to note that at least one trial judge in India, Shri C.K. Chaturvedi from Delhi has adopted an highly activist approach towards animal welfare and animal rights (See his judgment dated 16-12-1992 in R.K.Khatri & anr. Vs. Union of India & ors. privately published and circulated by 'Akhil Bharat Krishi Go-Seva Sangh'). In another landmark case with which this author had the privilege of being actively associated, a Division Bench of the Bombay High Court consisting of Justice M.L. Pendse & Justice V.V. Kamat directed the Commissioner of Police to forthwith commence prosecution of two top M.C.G.B. (Municipal Corporation of Greater Bombay) officers inter alia for cruelty to animals. In their judgment, the learned judges said "The dumb and innocent creatures of nature could not save their lives against the cruel two-legged army of the demolition squad". The B.M.C. was also directed to pay Rs.One lakh as compensation to the Petitioners in that case (Unreported judgment dated 12-8-1992 delivered in Appeal No.1087 of 1989:'Wildlife Wanderers Nature Foundation & ors. Vs Municipal Corporation of Greater Bombay & ors.').

5. JUDICIAL ACTIVISM AS AN OPTION :

According to me, if the courts can be persuaded to accept that an animal is a 'person' in the eyes of law, it will be a landmark in Constitutional and Environmental Law. The fundamental rights available to 'persons' under the Constitution of India, will then become available to animals also. And animal rights activists and groups will be able to move the High Courts and the Supreme Court as 'next friends' of the animals for enforcement of such rights and for quashing and/or staying all actions which are contrary to or inconsistent with such fundamental rights. Our Supreme Court has said that 'where a legal wrong or a legal injury is caused to a person or to a determinate class of persons and such a person or determinate class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for appropriate directions' (See S.P. Gupta Vs. Union of India, AIR 1982 SC 149).

It is interesting to note that on the question of locus standi, the Supreme Court has now ruled that writ petitioners representing a Hindu segment of society who felt aggrieved by the exemption granted by the West Bengal Government enabling members of the Muslim Community to slaughter cows on Bakri Id day inspite of the 'West Bengal Animal Slaughter Control Act, 1950' being in force, had sufficient locus standi to move the Petition since they had not personal interest but a general cause to protect (see 'State of W.B. & Ors. V/s. Ashutosh Lahiri & Ors. (1995) 1 SCC 189).

This is a welcome change. Earlier in Mohd. Hanif Quareshi's case (1958) the Supreme Court had not allowed certain organisations, including the Bharat Go-Sevak Samaj, to intervene in that case. Even when the counsel instructed by one of the interveners was permitted to address the Court he was heard only in the capacity of 'amicus curiae' (friend of the court) in view of the importance of the questions involved in those proceedings. But he was not heard in his capacity as an advocate for the animal welfare organisation in question. I am of the view that religion should not be made a determinative factor at all in deciding the question of legal standing in cases involving animals. Animal Rights, animal welfare and other similar organisations should straight-away be heard in cases involving animals if they desire to intervene in the interest of animals. Their communal or religious beliefs are not material for deciding their locus standi in such cases.

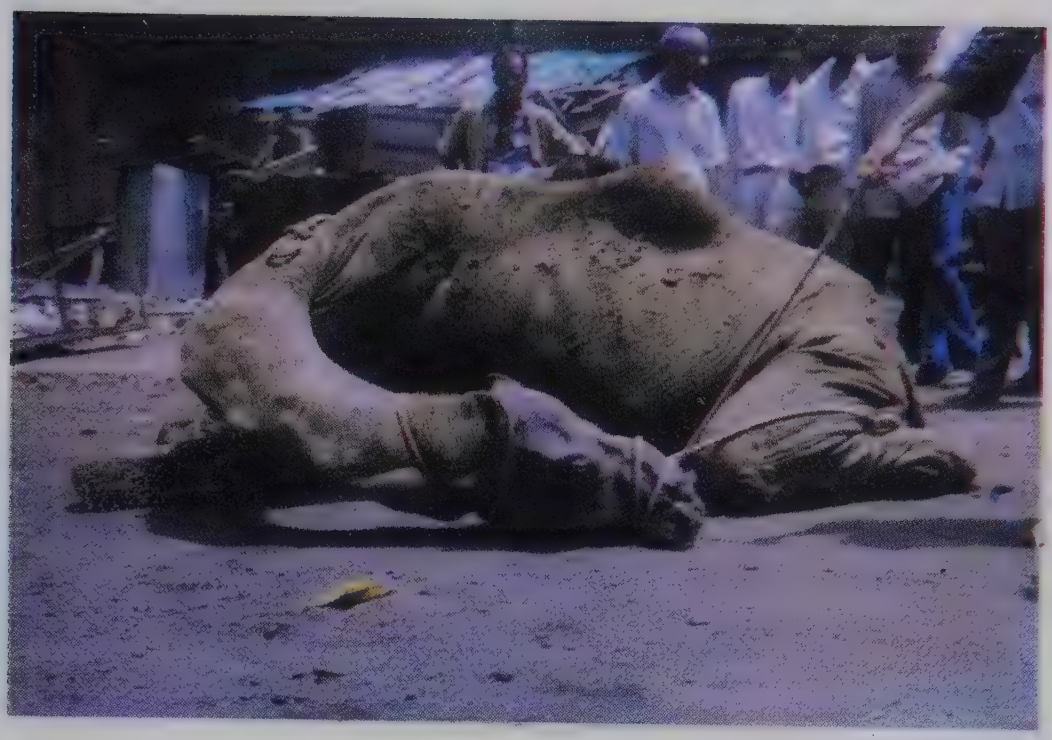
In my opinion there can be no dispute about the locus standi of animal lovers to act as spokesperson for the animals. There is at least one reported decision of the Supreme Court of United States penned by the great environmentalist Justice William O. Douglas suggesting that America's trees and rivers deserved the legal status given individual citizens, private corporations and even ships to bring a law suit. Justice Douglas has forcefully asserted that "the voice of the existing beneficiaries of these environmental wonders should be heard". (See Sierra Club Vs. Morton, 405 U.S. 727 (1972). Unfortunately the foresight of a visionary like Justice Douglas is not palatable to those who lack such foresight and vision.

There is a very interesting case from a trial court in Hawaii which anticipates the possible problems which animal rights activists in India may have to face. In May 1977, two people, Kenneth Le Vasseur and Sipman, set free two bottle-nosed dolphins used for experimental purposes by the University of Hawaii's Institute of Marine Biology. Those who viewed the popular movie "Free Willy" and

"DADDY ! WILL THEY LET ME KEEP MY TUSKS ?"

"THIS IS A CAGE FULL OF PARROTS NOT A BASKETFULL OF CARROTS"
4 day old baby parrots dumped in a cage
Courtesy: Bombay S.P.C.A.

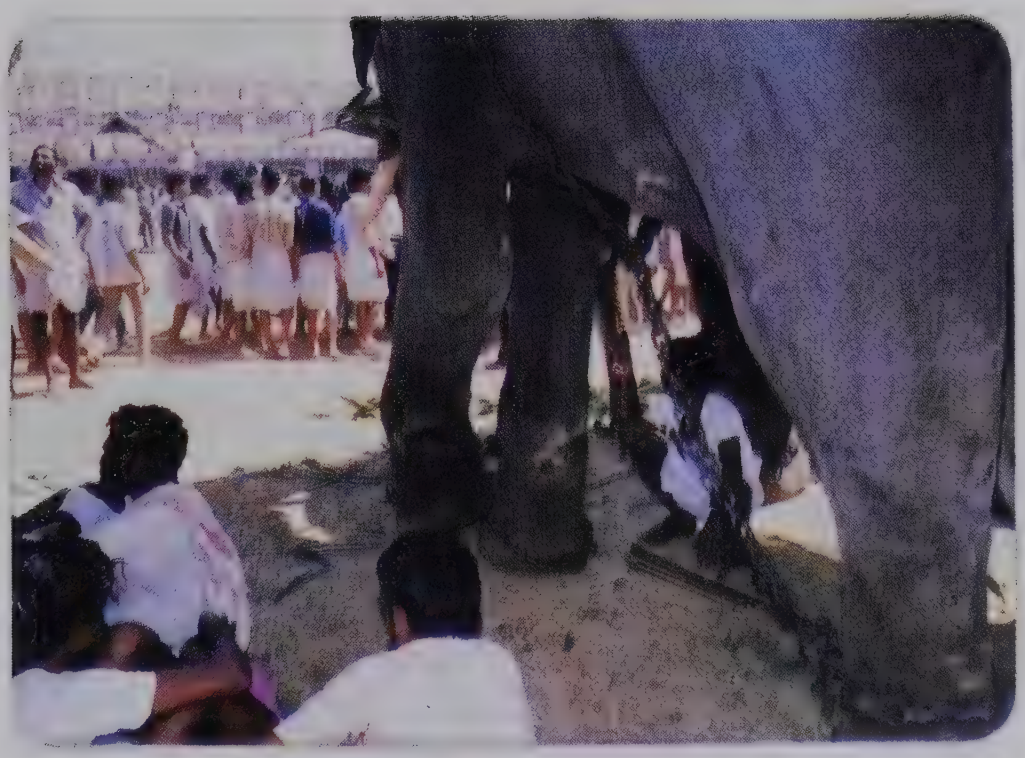
"WE DON'T FEEL DESERTED IN THE DESERT"



"SHIPWRECKED"
The ship of the desert wrecked on Bombay beaches
Courtesy: Bombay S.P.C.A.

"AN UP-SIDE DOWN WORLD SANS RIGHTS"
Courtesy: Bombay S.P.C.A.

"THE UNHEEDED CRY"
Pigs are loving & sensitive animals, but they are killed by repeated stabbing,
Courtesy: Cartman, Bangalore



"ONE FOOT IN THE GRAVE?"
Wound on elephant's leg
Courtesy: Cartman, Bangalore

"A BRAND NEW GIFT FROM MY MASTER"
Bullock branded with hot iron in full consciousness
Courtesy: Cartman, Bangalore

"A CART FULL OF SUFFERING"
Animals are carried to slaughter houses with legs tied up
Courtesy: Cartman, Bangalore

"HAMMERING AWAY OUR VIEWS ON THEIR HEADS"
Casting a bullock by smashing his head.
Courtesy: Cartman, Bangalore

"WRINGING THEIR RIGHTS"
Twisting the neck to cast the bullock.
Courtesy: Cartman, Bangalore.

"PERMISSIBLE SODOMY?"
Sharp stick is forced into the anus of the animal to goad it to the slaughter-platform.
Courtesy: Cartman, Bangalore

"WHAT A WAY TO STOP ME FROM SEEING MY MOTHER"
To restrain buffalo calf, its front leg is broken & swing around the neck
Courtesy: Cartman, Bangalore

"DROWNED IN THE RED RIVER THAT NEVER RUNS DRY"
Animals lying in a pool of blood, urine and dung.
Courtesy: Cartman, Bangalore

"SCAR WITNESS SEEKING JUSTICE"
Animal injured by ruthless beatings.
Courtesy: Cartman, Bangalore.

cheered his liberators should consider what happens in reality. The material for this case is derived from a paper by Gavin Daws : "Animal Liberation as Crime" published in 'Ethics and Animals' edited by Harlan B. Miller and William H. Williams. Daws says "when the dolphins were taken from the tanks, a message was left behind identifying the releasers as the 'Undersea Railroad', a reference to the Underground Railroad, the Abolitionists' Slave-freeing network of pre-Civil War days. Along the Underground Railroad in the 1850's, it sometimes happened that juries refused to convict people charged with smuggling slaves to freedom. That was the kind of vindication Le Vasseur and Sipman were looking for... They did not consider themselves to be criminals. In fact they took the view that if there was a crime, it was the crime of keeping dolphins - intelligent, highly aware creatures with no criminal record of their own - in solitary confinement, in small concrete tanks, made to do repetitious experiments, for life."

At their trial, the defendants' lawyer argued that the defendants were only doing their duty by helping 'another' in a difficult situation. But the judge was not willing to accept that dolphins were 'persons'. He said they were merely 'property'. The defence then tried to get the judge disqualified for prejudice and sought to take the case to the Federal Court claiming that the Thirteenth Amendment (U.S. Constitution) rights in respect of 'involuntary servitude' extended to dolphins also. Justice Douglas's view would have helped them. But the trial Judge did not grant the defendants leave to go to the Federal Court and finally they were convicted of theft. Weighing legal interests, the judge found that since in the eyes of law cruelty to animals is merely a misdemeanor and theft is a felony, the defendants in any event were guilty. So two humans lost in Court. But two dolphins were free !

Animal Interest Litigation (AIL) as a branch of Public Interest Litigation (PIL) has now arrived in India too. But it will require a great deal of judicial foresight to accept its arrival and to enable it to consolidate its position. That animal lovers and friends of the environment when entrusted with judicial power can and do use it for the benefit of the causes they believe in was amply illustrated in the recent case of the Karnataka foxes about whose plight Ms. Maneka Gandhi wrote an article in March 1994. This article formed the factual basis for a plea made in a letter addressed to Justice Michael F. Saldanha of the Karnataka High Court, on 3rd December 1994 by the 'All India Animal Welfare Association'. The foxes were in danger of being ritually slaughtered for religious worship in mid-January 1995 in two places in Karnatak where this macabre act had acquired the status of an annual festival.

Treating the letter addressed to him as a suo motu writ petition, Justice Saldanha, whose love for animals and the environment is well-known, issued an order on 19th December 1994, directing the Respondents, who were top government officials entrusted with a duty to protect wildlife " to ensure that appropriate preventive action is taken well in advance" to prevent repetition of such acts. The Chief Wild Life Warden, Karnataka, the Director of Wild Life Preservation, Government of India and the Chairman, Animal Welfare Board of India, were directed by the learned judge to file a report indicating the steps taken by them "in order to ensure that breach of the law has taken place". The judge also appointed an advocate as `amicus curiae' in the matter to assist the court in doing justice to the foxes in imminent danger of being killed.

This prompt and courageous step ensured that the lives of the foxes were spared. Such constructive use of judicial activism by a High Court judge is very rare and highly admirable. I have not come across any other case in India where judicial activism by the higher judiciary has so promptly resulted in achieving the goal of animal rights protection at the instance of an animal welfare organisation. In many respects, therefore, this case represents a water-shed in the animal rights movement in India and will be viewed in years to come as a landmark instance of judicial activism in aid of animals.

6. NEED FOR SCIENTIFIC DATA :

The first step in the process of empowerment of animals must involve the collection of unimpeachable scientific and anthropological data from various sources to prove that animals too have distinct emotions, feelings and intelligence which imbues them with a distinct personality. In the West, there have been several studies in the field of anthropomorphism i.e. a study attributing human characteristics to non-human creatures. Although such studies proceed on an unscientific assumption that many human traits are portrayed in some relevant fashion in animals, they have led to the collection of voluminous scientific data. For example, Stephen Walker in his book 'Animal Thought' (1983) argues that human thought is intimately connected with the activities of the human brain. Many other vertebrate animals have very complicated brains which in some cases appear to be physically very similar to human brains. Laboratory experiments have also supported the suggestion that what goes on in animal brains has a good deal in common with what goes on in human brains. In my

opinion, scientific data on these lines will assist greatly in establishing that animals are 'persons' for the purpose of legal rights.

Tom Regan has persuasively argued that "perception, memory, desire, belief, self-consciousness, intention, a sense of the future - these are among the leading attributes of the mental life of normal mammalian animals aged one or more". He emphasises that if some categories of emotions like fear and pain plus sentience (understood as the capacity to experience pleasure and pain) are added to this list of attributes, "We begin to approach a fair rendering of the mental life of these animals." Faced with this situation, those who advocate discrimination between humans and animals have no option but to prove their point of view by evidence to support their contentions. Regan says that such discriminators have till date been unable to meet the burden of proof required to overcome the argument in favour of equal rights for animals.

Modern scientific advances have resulted in and are continuously resulting in the increasing use of animal organs from live animals as replacements for dead ones in live humans. Scientists at Cambridge and other research centres have found that organs like the kidney compatible with the human body can be harvested from genetically altered pigs, making xeno-transplant a new avenue of hope, according to Dr. Claudio Ponticelli, an Italian authority on kidney transplant. He said that pig valves are already being successfully used for the human heart. Pigs are ideal animals whose tissues come close to those of man. (See report on page 23 of Indian Express, Bombay dated 7.10.1994).

The legal question to pose is this : The kidney of a pig when it is inside the pig has no fundamental right to life under existing laws. Yet the very same kidney when put inside a human, gets such rights in accordance with law. If a man shoots a pig through its kidney and the pig dies, at most it would be a minor offence. But if a man shoots the same kidney when it is inside another man, it would be murder! In other words, rights become dependent on location. The poor pig has no rights but when its organs are extracted and its life is extinguished such organs acquire rights by virtue of their human location ! In my view, advances in medical science will soon substantiate the essential unity in living creatures and this will make it increasingly difficult to deny equal rights to such creatures on ethical, moral and ultimately legal grounds.

7. THE LEGAL POSITION :

The Supreme Court of India while stating that neither God nor any super-natural being could be a "person" in law nevertheless held that a 'deity' in certain circumstances can figure as a 'legal person' (See 'Yogendra Nath Naskar Vs. C.I.T., AIR 1969 SC 1089). The American Supreme Court has held that an unborn foetus is a 'person' after the first trimester of pregnancy. (See Roe Vs. Wade 410 U.S. 113 (1973)). By means of legal fiction even inanimate firms and companies which exist only in documents are accepted as juristic persons having a separate and distinct legal identity. Blackstone has explained that these "corporations or bodies politic ..... are formed and created by human laws for the purpose of society and government" unlike "natural persons" created only by God. If "creation by God" is the criterion for qualifying as a 'natural person', all living creatures would qualify, because "All things bright and beautiful/All things great and small/All things wise and wonderful/The Lord God made them all".

My contention is very simple : If something which is not yet fully alive and visible can be treated as 'a person' in the eyes of law, why can't animals who are fully alive, visible and natural be treated as such ? If a legal fiction can come to the aid of inanimate companies, why can't a legal fact be used to assist animals? In fact, recent fossil discoveries of hominids by paleontologists in north-central Ethiopia have lent scientific support to the theory first put forward by Charles Darwin that humans and apes branched off from a single ancestor over 4 million years ago (See TIME Magazine, October 3, 1994 pg. 46).

8. THE LEGAL HURDLES :

Whenever State legislatures have passed enactments banning slaughter of certain animals, including cows, or restricting such slaughter in some manner, members of a minority religion generally engaged in the butchers trade and its subsidiary under-takings have been quick to challenge the constitutional validity of such enactment on the ground that such legislation adversely affected their fundamental rights. (See (1) Mohd. Hanif Quareshi & Ors. V/s. State of Bihar etc. AIR 1958 SC 731, (2) 'Abdul Hakim Quaraishi & Ors. Vs. State of Bihar etc. AIR 1961 SC 448, (3) Mohd. Faruk V/s. State of M.P. & Ors. 1961(1) SCC 853 and (4) Khatki Ahmed Mushabhai V/s. Limdi Muncipality (1979) 1 SCC 248). It is unfortunate that there has been no corresponding activism in litigation on part of

animal rights activists with a view to at least protect if not to assert the rights of non-human living creatures, especially animals. Even the recent spate of environmental litigation has been directed more against general ecological problems like air and water pollution and not at specific problems of animals.

I suspect that the real reason why the Legislatures and the Courts in India do not want to do anything to help the cause of animal rights is because some religious groups mistakenly believe it to be a part of their religion to kill animals. Though the Supreme Court of India has negatived this contention of cow-slaughter mandated by religion, our Government is reluctant to take any steps likely to hurt the 'sentiments' of such religious groups. In the name of secularism and minority rights, the rights of animals are thus easily brushed aside if not trampled.

9. THE TEST OF REASONABLENESS :

However, if our law-makers do gather the courage and the conviction to make laws prohibiting any act or conduct which violates the fundamental duty of compassion for living creatures, the Courts, in my view, would uphold such laws as imposing a "reasonable restriction" on the relevant fundamental right just as they upheld any law implementing a Directive Principle before the insertion and extension of Article 31-C in the Constitution. Under our Constitution, it is the obligation of every citizen to perform the Fundamental Duties enumerated in Part IV-A. It is quite obvious that if a particular citizen fails to perform any one of these duties, it would result in violation of some rights which correspond to those duties. What those rights are has not been mentioned. The late Dr. T.K. Tope was of the view that with the inclusion of the Chapter on 'Fundamental Duties' by the 42nd Amendment w.e.f. 3.1.1977, the Constitution has accepted the concept of 'unenumerated rights' [See (1982) 2 SCC Journal 9-14]. According to me, the rights of animals/living creatures fall within this category of unenumerated rights which are literally crying out for enumeration by our Supreme Court.

10. THE WILL AND THE WAY :

Although my idea may sound utopian, in my considered opinion, it is worth testing in the Supreme Court of India in an appropriate test case. I have based my arguments and my objectives upon existing legal provisions, but the Supreme

Court if convinced, has the power even to suggest amendment of existing legislation. In the Bhopal Gas Disaster case for instance, Justice Ranganathan suggested that the existing Fatal Accidents Act should be amended or fresh legislation enacted. He then proceeded to elaborate upon the scope of the suggested legislation. (See Charan Lal Sahu Vs. Union of India, AIR 1990 SC 1480). Where there is a Will, there is always a Way. The Supreme Court has held in M.C. Mehta's case that public health and ecology should have priority over other important state concerns such as unemployment and loss of revenue. (See M.C. Mehta Vs. Union of India (1987) Supp. SCC 131). In my view, this is an environment-friendly step in the right direction.

11. A "RIGHT" TO COMPASSION :

The Post-Emergency Supreme Court has often been criticised for its activism, but such criticism overlooks the fact that the Court's activism was essentially based upon a steady expansion of the scope of enforceable fundamental rights with reference to the unenforceable directive principles which are nevertheless fundamental in the governance of our country. Just as there can be no remedy without a right, there can be no right without a duty. Nor can one interpret the Fundamental Rights in isolation and without reference to Fundamental Duties. If it is the duty of every citizen of India to have compassion for 'living creatures' [Art.51-A (g)] it must follow that "living creatures" have a "right to compassion". Compassion includes within its ambit, the essentially emotional qualities of kindness, sympathy and mercy. Those who have got used to beg for mercy as mercy must now learn to fight for mercy as a right.

Tom Regan believes that "as a matter of strict justice", animals, being "possessors of inherent value", have "a fundamental right to be treated with respect". This could well be the right which corresponds neatly to our duty as Indian citizens do have compassion for living creatures. It is high time that our law-makers realised that in an enlightened society, the right to slaughter cannot co-exist with a duty to have compassion. It is a contradiction in terms. Any killing, except mercy-killing, involves a deliberate withholding of sympathy from the victim. As far back as in 1518, Sir Thomas More wrote in his 'Utopia' that "slaughtering our fellow creatures gradually destroys the sense of compassion, which is the finest sentiment of which our human nature is capable". The degree of compassion in humans depends upon the degree of their spiritual and ethical

progress, not on the degree of their material or economic progress. The insertion of a fundamental duty to have compassion in our Constitution pre-supposes that we Indians have achieved the spiritual and ethical level required to have compassion. In 'The Moral Basis of Vegetarianism'(1959), the father of Our Nation, Mahatma Gandhi comments : "I do feel that spiritual progress does demand at some stage that we should cease to kill our fellow creatures for the satisfaction of our bodily wants". But this spiritual progress must be matched by enlightened legislation, if its benefits are to be channeled through the legal process. As Lord Houghton of Sowerby observed while addressing the Animal Rights Symposium at Trinity College, Cambridge, in 1977 : "My message is that animal welfare, in the general and in the particular, is largely a matter for the law ..... There is no complete substitute for the law. Public opinion, though invaluable and indeed essential is not the law. Public opinion is what makes law possible and its observance widely acceptable". Unlike Article 37 of the Constitution of India which specifically provides that the Directive Principles of State Policy shall not be enforceable in any Court, there is no specific provision in the Constitution of India as to the non-justiciability of Fundamental Duties.

12. ALL ANIMALS ARE EQUAL :

I believe that once it is established that animals are 'persons' for the purpose of environmental law, it can be successfully canvassed that the fundamental right to equality before the law and equal protection of the laws applies to animals also. Article 48 directs the State to take steps to prohibit slaughter of cows, calves and other milch and draught cattle and for preserving and improving the breeds of such cattle. In my view, even if we consider 'animals' as belonging to one distinct class among 'other living creatures' there can be no intelligible differential between 'cattle' and other animals because the fundamental guarantee of Article 14 involves equal protection of the laws which in turn means the right to equal treatment in similar circumstances. I also feel that the prohibition presently restricted to 'slaughter' must gradually include all forms of cruelty to all animals on the touch-stone of the fundamental duty to have compassion for living creatures.

13. AN IDEA WHOSE TIME HAS COME :

In conclusion, I wish to reiterate that it is the fundamental duty of every citizen of India inter alia to abide by the Constitution [Art. 51-A(a]; to abjure

violence [Art. 51-A(i] and to develop the scientific temper, humanism and the spirit of inquiry and reform [Art. 51-A(h]. If the Judges of the Supreme Court and our Parliamentarians take these Fundamental Duties as seriously as they take their Fundamental Rights, animal rights activists will have no problem in proving that all living creatures and especially animals are indeed 'persons' with the emotions and ability to experience pain and joy just like us so-called 'human' beings. Of course, one must be prepared to face judges who are like the scientist who appears to be quite fond of his dog at home but becomes seemingly insensitive to animal suffering upon donning his white coat [See Jane Goodall's Foreword to Bernard E. Rollin's 'The Unheeded Cry : Animal Consciousness, Animal Pain and Science' (1990)]. But actual rays of hope are much brighter than imagined clouds of gloom. Writing about the inherent capacity of latent compassion to keep on growing in human hearts,the nineteenth century historian of ideas W.E.H. Lecky in his 'History of European Morals' anticipated : "At one time the benevolent affections embrace merely the family, soon the circle expanding includes first a class, then a nation, then a coalition of nations, then all humanity, and finally, its influence is felt in the dealings of man with the animal world". Rabindranath Tagore also envisioned a "heaven of freedom" without "narrow domestic walls". To achieve this heaven he implored God to "strike at the root of penury" in human hearts (See 'Gitanjali' by Rabindranath Tagore).

I am a great believer in Victor Hugo's dictum that an invasion of armies can be halted but not an idea whose time has come. Fundamental Rights for animals is an idea whose time, according to me, has come.

RAJU Z. MORAY,
M.A., LL.B.
Advocate

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RAJU Z. MORAY,
M.A., LL.B.
Advocate

FROM CRUELTY TO COMPASSION

The story of animal rights and human wrong in India

by

Raju Z. Moray
Advocate

The Prevention of Cruelty to Animals Act 1960, is outdated and ineffective. In this article, Advocate Raju Z. Moray, argues that it should be rewritten in the light of the Fundamental Duty cast by the Constitution upon all citizens of India to have compassion for living creatures.

FLAWS AND LOOPHOLES:

The Prevention of Cruelty to Animals Act 1960 (PCA Act) is an outdated, ineffective and deficient piece of legislation. In an age of ecology and environmental consciousness, it is an anachronism on our statute books. The PCA Act classifies all living creatures into two classes: Human beings and animals (meaning all living creatures other than human beings) and seeks to regulate the behavior of the former towards the latter. It was designed to be a law of the human, by the humans, for the animals but in reality, like any other law, it has turned out to be a law of the humans, by the humans, for the humans. This bias is evident from the preamble of the Act which clarifies that the Act is meant to prevent only the infliction of "unnecessary" pain or suffering on animals. Which means that pain and suffering deemed "necessary" for animals by humans is put out of the reach and purview of the Act. It therefore permits humans to inflict any pain or suffering upon animals based solely upon their subjective perception as to what is "necessary" pain and suffering for animals.

The animals have no say in the matter of their pain and suffering. True, the Act set up the 'Animal Welfare Board of India' for the promotion of animal welfare generally and for the purpose of protecting animals from being subjected to unnecessary pain or suffering in particular. But the pervasive presence of officialdom ensures that the Board becomes yet another instrument for the maintenance of the status quo. With its existence dependent upon the munificence of the Government in power and its purely advisory functions including rendering of advice on the design and maintenance of slaughter houses, the role of the Board is limited to ensuring humane killing methods rather than working towards the cessation of killing of animals for the satisfaction of the bodily wants of humans. In other words, the Board is powerless to do anything about animal killing pain or suffering deemed to be "necessary".

What is "necessary" and what is not is a highly subjective matter to decide and the deciding authority is always with the Government. In fact, it will not be wrong to say that in our legal system "necessary" means anything that is deemed necessary by the Government.

IS CRUELTY NECESSARY?

Can infliction of pain and suffering on animals ever be necessary? Can killing of

animals ever be necessary? In order to answer this question, one will have to consider the concept of necessity. This again is highly subjective. One man's option is another man's necessity. The safest course therefore would be to consider what would amount to a purely legal necessity or a necessity in law. Considered thus, applying settled principles of property law, we discover that to constitute legal necessity there must be such a pressure upon the estate that without the alienation in question the estate could not have been preserved. The law says that any act done due to legal necessity must necessarily be a defensive act undertaken for the protection of the estate already in possession. Therefore dire and unavoidable necessity alone can constitute legal necessity. The questions which thus arise for consideration are: Is there any dire, unavoidable necessity for humans to kill animals or to inflict pain and suffering on them? What interest do humans seek to protect by such actions? Can such actions be termed defensive, or are they highly offensive? As you ponder over these issues, you must remember that in law, the burden to prove legal necessity would be on the humans who claim such necessity.

When we consider what the PCA Act considers necessary, hence acceptable, we find that experiments on animals, including operations, are not considered unlawful even if they involve unnecessary pain and suffering. The only requirement is that the experimenter should claim that the experiment is for the purpose of advancement by new discovery of physiological knowledge or knowledge which will be useful for saving or prolonging life, or alleviating suffering, or for combating any disease, whether of human beings, animals or plants. On the face of it, this provision looks very reasonable, especially as a committee of officials and non-officials for the purpose of controlling and supervising experiments on animals is also envisaged by the Act. But what this legal provision does is to permit one animal or plant to suffer or die in order to alleviate the suffering or prolong the life of another human being, animal or plant. The ground reality, however, is that even though human beings, animals and plants are mentioned in one breath, it is always the animals and plants who have to suffer and die for the sake of humans, never vice versa.

Apart from experiments on animals, several other acts which would be considered cruel by any reasonable person, have been considered necessary and acceptable by the PCA Act. Thus, dehorning of cattle, castration, branding, nose-roping, destruction of stray dogs in lethal chambers and the extermination or destruction of any animal under the authority of any law for the time being in

force is not considered to be an offence under the Act. So there is precious little really that can be considered as amounting to cruelty after clearing all the hurdles in the Act itself.

WHAT ABOUT PUNISHMENT?

The most laughable aspect of the PCA Act is the absurdly inappropriate quantum of punishment prescribed for offenders who are found guilty if anyone has the courage, resources and patience to go through the process of a criminal trial under our legal system notorious for its delays. For the persevering prosecutor it is small solace to know that offenders are punishable in the case of first offence with a fine which may extend upto fifty rupees only, and in the case of a second or subsequent offence committed within three years of the previous offence, with a fine which may extend to one hundred rupees only or with imprisonment for a term which may extend to three months or with both. The owner of an animal who has failed to exercise reasonable care and supervision with a view to prevent an offence against such animal is also made liable for prosecution. That gives a glimmer of hope. But then it is stipulated that such an owner shall not be liable to imprisonment without the option of fine. That casts a shadow of darkness. When one looks at the ridiculously small price on has to pay if caught, tried and convicted for causing "unnecessary" pain and suffering to a fellow living creature, one can only say that something is seriously wrong with this state of affairs.

THE VEXED QUESTION OF RELIGION:

The PCA Act does not merely confine itself to the question of cruelty and its necessity. It makes allowance for religion and religious beliefs as well. Section 28 of the Act expressly states that nothing contained in the Act shall render it an offence to kill any animal (i.e. any living creature other than a human being) in a manner required by the religion of any community. So any cruelty can be practiced and any amount of wholly "unnecessary" pain and suffering can be inflicted without any impediment provided it is done in the name of religion. The larger, and more important, ethical questions viz. Can cruelty be religious? Can unnecessary pain and suffering be religious? Can killing of other living creatures of Creation ever be religious? - are not considered at all.

IS THERE A RIGHT TO KILL ANIMALS?

Whenever cases involving an assertion of a right to slaughter have gone up to our Apex Court, they have always been taken there by the slaughterers, never by the slaughtered. While slaughterers have claimed violation not only of their fundamental right to carry on their occupation, trade and business, but also of their fundamental right to practice their religion, the slaughtered creatures have never been able to plead a right to life. Nor has anyone else been able or allowed to plead it for them.

The Supreme Court of India first grappled with this contentious issue in 'Mohd. Hanif Qureshi & Ors. V/s State of Bihar & Ors.' decided on 23.4.1958. In that case, laws made by some State Governments banning the slaughter of certain cattle, especially cows, were challenged by the petitioners, who were practising "Kasais" or slaughterers, on various grounds including the right to practice their religion guaranteed by Article 25(1) of the Constitution of India. A five judge Constitution Bench of the Supreme Court ruled that the State laws were not violative of the fundamental rights of the Mussalmans under Article 25 (1) of the Constitution of India as there was no material to substantiate the claim of the petitioners that the sacrifice of a cow on Bakri-Id Day was enjoined or sanctioned by Islam in order to exhibit a Mussalman's religious beliefs and ideas. Mohd. Hanif Qureshi's case has been relied on and cited with approval by the Supreme Court of India on several subsequent occasions including in the case of 'State of West Bengal & Ors. V/s Ashutosh Lahiri & Ors.' decided by the Apex Court on 16.11.1994.

THE DUTY TO HAVE COMPASSION

What the Supreme Court of India has never had an occasion to do so far is to test the argument advocating the right to kill animals on the touchstone of the fundamental duty cast upon every citizen of India under Article 51-A(g) to have compassion for living creatures. In my opinion, any purported right to kill a living creature is clearly inconsistent with this fundamental duty to have compassion for living creatures, Besides, the right to kill living creatures has never been held to be 'fundamental' by anyone except its proponents who have sought to justify it on religious rather than legal grounds.

My arguments is that if citizens of India have a fundamental duty to have

compassion for living creatures, the living creatures of India have a corresponding fundamental right to expect compassion from citizens of India.

THE PRINCIPLE OF EQUAL CONSIDERATION OF INTERESTS:

I view the incorporation of a positive duty cast upon citizens of India to have compassion for living creatures as a manifestation of the principle of equal consideration of interests. This principle, which has gradually received widespread acceptance from animal rights activists all over the world, was first formulated comprehensively by the Australian Professor Peter Singer in his book 'Animal Liberation' whose first edition was published in New York in 1975. In Singer's own words, "The essence of the principle of equal consideration of interests is that we give equal weight in our moral deliberation to the like interests of all those affected by our actions. This means that if only X and Y would be affected by a possible act, and if X stands to lose more than Y stands to gain, it is better not to do that act. We cannot, if we accept the principle of equal consideration of interests, say that doing the act is better, despite the facts described, because we are more concerned about Y than we are about X. What the principle really amounts is this: an interest is an interest, whoever's interest it may be"

It is not inconceivable that the lawmakers who inserted Chapter IV-A on 'Fundamental Duties' into our Constitution with effect from 3.1.1977 were aware of this principle of equal consideration of interests which was being hotly debated and discussed in ecological and ethical forums all over the world at that time. The insertion of a positive duty to have compassion for living creatures indicates the belief of our law-makers that we Indians have made sufficient spiritual progress to accept compassion as an essential ingredient of our conduct. In 1932, Gandhiji had stated "I do feel that spiritual progress does demand at some stage we should cease to kill our fellow creatures for the satisfaction of our bodily wants". By including the duty to have compassion in the chapter on Fundamental Duties, our legislators in a way have attempted to shape Gandhiji's distant dream into a legal reality.

WHO WILL SPEAK FOR THE ANIMALS?

Since living creatures who plead a fundamental right to compassion are handicapped by reason of their physical disability of not being able to plead their

case in person or in the language of human beings in law courts, Non-Government Organisations (NGOs) representing their interests cannot be denied the right to intervene and plead on their behalf in a Court of Law. Animal Rights and Animal Welfare Groups in India are the natural and the right choice to represent the animals as their "next friends" in Courts of Law. Unlike many fundamental rights, fundamental duties are not subject to any constitutional restrictions. And while directive principles of state policy have expressly been made unenforceable in a Court of Law inspite of being fundamental in the governance of our Country, fundamental duties have not been subjected to any such restraint by the Constitution of India. In my opinion, it is not impossible for NGOs to persuade an activist Court to read a "right to equal consideration interests of living creatures" into the fundamental duty of citizens to have compassion for living creatures. Such activism would result in the recognition of a fundamental right to compassion.

THIS PCA ACT MUST GO

It is imperative that the current PCA Act of 1960 must be substantially amended. Better, replaced by new legislation. The Scheme of the Act and most of its provisions are inconsistent not only with subsequent developments in the field of animal welfare and animal rights, but as pointed out above, also with the fundamental duty to have compassion for living creatures which is now an integral part of our Constitution, even though the right to compassion has not as yet been recognised as "fundamental".

At a bare minimum, any new legislation in this field must contain the following provisions as essential features:

1. Animals must be given a right to be heard in all matters affecting them adversely. This right would be in harmony with the well-established principles of natural justice and can be exercised through NGOs concerned with animal rights and animal welfare.

2. Punishment prescribed must actually slap the offenders, not merely pinch them. One way is to bring the punishments on par with the penal provisions of the Wildlife (Protection) Act 1972 as substantially amended in 1991.

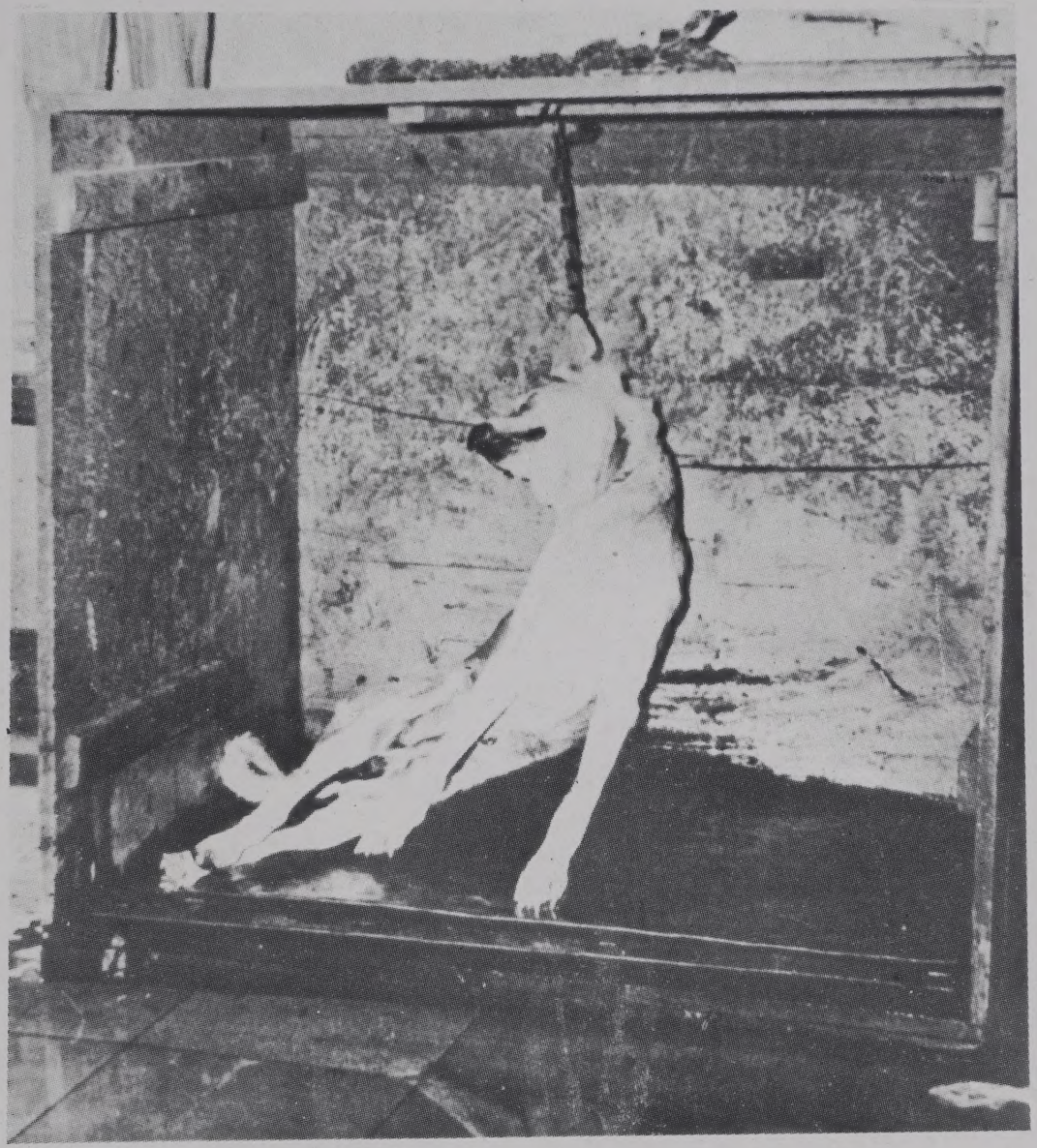
3. Enforcement should be entrusted to wardens of 'Societies for the Prevention

of Cruelty to Animals (SPCAs) or to a special 'Animal Police Force" comprising of cadets selected from volunteers sponsored by NGOs. Limited police powers can be conferred upon such volunteers and wardens.

4. Special tribunals should be established with one judicial and two administrative members, one of whom should always be a representative of animal rights / animal welfare NGOs. Summary procedures should be evolved and all cases should be disposed off, as far as possible in 6 months. Alternatively, the jurisdiction to entertain, try and dispose of cases pertaining to animals should be conferred upon Environmental Courts or Tribunals when they materialise.

CONCLUSION

Once a strong updated law relating to prevention of cruelty to animals is brought into force with adequate infrastructural machinery to enforce it, the number of offences against animals will in all probability decrease. The present PCA Act has proved that animals, when perceived as matter, don't really matter. The new PCA Act should therefore be a legislation whose bark should be as vicious as its bite.



"A SHOCKING WAY TO TREAT A FRIEND"
A dog being electrocuted by the Municipality

"WHOSE BURDEN AM I PULLING ?"
Courtesy: Cartman, Bangalore

WHAT IS AIAWA

All India Animal Welfare Association (AIAWA) is a nonprofit animal protection organisation, dedicated to establishing and defending the rights of all species.

AIAWA aims at:

★ Bringing about awareness among people, particularly children, through education that animals too can feel pain and suffer like human beings and therefore deserve a lot of kindness.

★ Getting the legislation changed, so that all crimes against animals are made cognizable and offenders are [illegible] penalised.

★ Securing recognition by the Central & the State Governments, that animals too have a right to live and die in dignity.

★ Encouraging people to adopt a natural and humane diet.

★ Providing shelters, mobile dispensaries, ambulances and other amenities for animals.

★ Promoting and implementing humane methods of Animal Birth Control, instead of extermination.

AIAWA

Give me my chance

"The greatness of a nation can be judged by the way its animals are treated"

Mahatma Gandhi